In the High Court of Punjab and Haryana at Chandigarh

.....

Amended C.W.P. No.16483 of 2006 (O&M)

.....

Date of decision: 9.11.2006

M/s Mohinder Pal and Company

.....Petitioner

v.

The Punjab State Civil Supplies Corporation Limited (PUNSUP) and others

.....Respondents

....

Coram: Hon'ble Mr. Justice S.S. Nijjar, Acting Chief Justice
Hon'ble Mr. Justice S.S. Saron

Present: Mr. Amar Vivek, Advocate for the petitioner.

.....

The petitioner after being successful in the bidding for the tender for the sale of unserviceable material like polythene covers issued by the Punjab State Civil Supplies Corporation Limited (respondent No.1) (`Corporation' – for short) now wants to withdraw from the same by taking the stand that the period of seven days for which the bid was to remain operative and valid had lapsed.

The Corporation on 24.1.2006 (Annexure-P.1) issued a tender for the sale of unserviceable material like polythene covers. The petitioner deals in unserviceable LDPE/HDPE/cross laminated covers polythene

covers/tarpaulins/fumigation covers. It made a bid for the tender of unserviceable material issued by the Corporation and has been awarded the contract on 15/19.9.2006 (Annexure-P.3). The petitioner, in fact has been a successful tenderer and allottee of the Corporation for purchasing this material for the past few years. It is alleged that the respondent-Corporation on 10.2.2006 in an illegal manner got the petitioner to sign a communication agreeing to extend the validity of the bid till a decision was taken by this Court in a pending writ petition i.e. CWP No.1603 of 2006 and other writ petitions whereby finalizing of the tender had been stayed but the Court had permitted the evaluation of the bids to be carried out. In the meantime, the season for sale of unserviceable polythene covers, which is between March to July every year, ended. After the rainy season the demand for the polythene covers ceases. The aforesaid writ petition was, therefore, withdrawn by the petitioner therein on 7.9.2006. It is contended that the award of the contract to the petitioner thereafter on 15/19.9.2006 (Annexure-P.3) was erroneous as the validity of the bid had already expired on 13.2.2006. The extension taken from the petitioner on 10.2.2006 in fact it is contended is contrary to the tender condition No.15 and is also otherwise illegal, void and contrary to law. It is further contended that the bid of the petitioner in any case was not the highest inasmuch as the petitioner made a bid for Rs.45.13 whereas respondent No.3 had made a higher bid to the tune of Rs.46.15. Therefore, the bid of respondent No.3 was to be accepted and not that of the petitioner.

We have given our thoughtful consideration to the matter. It is not disputed by the petitioner that he has indeed given a written acceptance

and undertaking dated 10.2.2006 extending the validity of his offer/rates for unserviceable polythene material till disposal of CWP No.1603 of 2006 which was at that time pending in this Court. The petitioner of the said writ petition had thereafter withdrawn the aforesaid writ petition from this Court. Accordingly, the tender bid submitted by the petitioner on 6.2.2006 for disposal of unserviceable polythene material and offer for lifting of stocks was awarded to him on 15/19.9.2006 (Annexure-P.3). The contract, therefore, between the parties stands complete. The contention of the petitioner that in terms of Clause 15 of the terms and conditions of the tender dated 24.1.2006 (Annexure-P.1) provided for the offer to be valid for seven days from the date of opening and, therefore, the extension is in violation of the said condition is not to be gone into in exercise of the extra-ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India. This is more so for the reason that the parties had themselves agreed to extend the validity of the offer/rates in respect of the tender till the disposal of CWP No.1603 of 2006. The said writ petition was withdrawn on 7.9.2006 and thereafter the petitioner has been awarded the tender. The fact that the tender of respondent No.3 who is stated to have given higher rates than the petitioner has not been accepted is also not to be gone into in the present proceedings. The petitioner has not placed any material on record to show that the tender given by respondent No.3 was higher than that given by it. Besides, these are disputed questions of fact. Therefore, for the breach, if any, of the terms of the contract that been awarded to the petitioner, the petitioner has his remedies under the civil law and not in exercise of the extra-ordinary writ jurisdiction.

For the foregoing reasons, there is no merit in this petition and the same is accordingly dismissed.

(S.S. Nijjar)
Acting Chief Justice

November 9, 2006. **(S.S. Saron)**
Judge

hsp

Whether fit for indexing: Yes